

ORDINANCE NO. 2020-08

**AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE,
FLORIDA, AMENDING SECTION 29-5, “COLLECTION OF
STORMWATER UTILITY FEE; LIENS” OF THE VILLAGE
CODE OF ORDINANCES RELATING TO THE VILLAGE’S
STORMWATER UTILITY AND COLLECTION METHODS;
PROVIDING FOR SEVERABILITY; PROVIDING FOR
CODIFICATION; PROVIDING FOR CONFLICTS; AND
PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, in Chapter 166 – Municipalities, Florida Statutes, the Florida State Legislature conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, pursuant to Section 403.0893, Florida Statutes, the Florida State Legislature also conferred upon local governments the authority to create stormwater utilities and adopt stormwater utility fees to plan, construct, operate and maintain stormwater management systems; and

WHEREAS, on June 22, 1993, the Village of Key Biscayne (the “Village”) adopted Ordinance 93-11, establishing the Village’s stormwater utility, which is codified in Chapter 29 of the Village’s Code of Ordinances; and

WHEREAS, the Village currently collects stormwater utility fees from all residential and nonresidential properties in the Village on the Miami-Dade County Water and Sewer Department’s water and sewer bill; and

WHEREAS, pursuant to Section 403.0893(3), Florida Statutes, local governments may choose to collect stormwater utility fees using the uniform method to levy, collect, and enforce non-ad valorem assessments as provided for in Section 197.3632, Florida Statutes (the “Uniform Method”); and

WHEREAS, the Village Council desires to have the option to use the Uniform Method to collect its stormwater utility fees from all residential and nonresidential properties in the Village pursuant to Section 403.0893, Florida Statutes; and

WHEREAS, the Village Council has determined that it is in the public interest to adopt regulations that incorporate use of the Uniform Method in collection of stormwater utility fees; and

WHEREAS, the Village Council finds that this Ordinance is in the best interest of the Village’s residents.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:¹

¹ Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with **highlighted** ~~double-strikethrough~~ and double underline.

Section 1. Recitals. The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Amending Section 29-5 of the Village Code. That Section 29-5, "Collection of Stormwater Utility Fee; liens," of the Code of Key Biscayne, Florida is hereby amended to read as follows:

Sec. 29-5. - Collection of Stormwater Utility Fee; liens.

- (a) The Stormwater Utility Fee shall be billed to the owner, tenant or occupant of each Developed Property. If the Stormwater Utility Fee is not fully paid by the owner, tenant or occupant on or before the past due date set forth on the owner's, tenant's or occupant's bill, a ten percent late charge may be added to the bill. Any unpaid balance of the owner, tenant or occupant for a Stormwater Utility Fee shall be subject to an interest charge at a rate of eight percent per annum. Imposition of this interest charge shall commence 60 days after the past due date of the fees set forth on the bill of the owner of the Developed Property. WASAD is hereby authorized to act as the Village's agent for the purpose of billing and collecting Stormwater Utility Fees. Stormwater Utility Fees shall be billed by WASAD in the same manner and subject to the same rules and regulations governing WASAD's water and sewer bills, including, but not limited to, the right to discontinue service.
- (b) Fees and late charges, together with any interest charges, shall be debts due and owing the Village's Stormwater Utility and all of same shall be recoverable by the Village in a court of competent jurisdiction.
- (c) The Village Manager shall establish procedures to notify owners, tenants, occupants or managers of Developed Property of delinquent Stormwater Utility Fee accounts.
- (d) All Stormwater Utility Fees, late charges and interest accruing thereupon, due and owing to the Village's Stormwater Utility which remain unpaid 60 days after the past due date shall become a lien against and upon the Developed Property for which the Stormwater Utility Fees are due and owing to the same extent and character as a lien for a special assessment. Until fully paid and discharged, such fees, late charges, and interest accrued shall constitute a special assessment lien equal in rank and dignity with the liens of Village ad valorem taxes and superior in rank and dignity to all other liens, encumbrances, titles, and claims in, to or against the Developed Property involved for the period of five years from the date such Stormwater Utility Fees, late charges, and interest accrued thereupon became a lien as set forth in this chapter. This lien may be enforced and satisfied by the Village pursuant to Ch. 173, Florida Statutes, as amended from time to time, or by any other method permitted by law. The lien provided for in this subsection shall not be deemed to be in lieu of any other legal remedies for recovery of such fee, late charges, and accrued interest available to the Village.
- (e) For Stormwater Utility Fees which become more than 60 days past due and unpaid, the Village shall cause to be filed in the office of the Clerk of the Circuit Court of Dade County, Florida, a notice of lien or statement showing a legal description of the Developed Property against which the lien is claimed, its location by street and number, the name of the owner, and an accurate statement of the fees and late charges then unpaid. A copy of such notice of lien shall be mailed within a reasonable time to the owner of the Developed Property involved as shown by the records of the tax collector of Metropolitan Dade County. No such lien shall

be enforceable by the Village unless this notice is filed within six months from the date the fees and late charges become a lien as established in this section.

- (f) Liens may be discharged and satisfied by payment to the Village of the aggregate amounts specified in the notice of lien, together with interest accrued, and all filing and recording fees. When any such lien has been fully paid or discharged, the Village shall cause evidence of the satisfaction and discharge of such lien to be filed with the office of the Clerk of the Circuit Court of Dade County, Florida.
- (g) Notwithstanding other provisions to the contrary, the Village shall have the discretion not to file notices of lien for fees, late charges, and interest accrued in an amount less than \$50.00. If the Village elects not to file a notice of lien, such fees, late charges, and accrued interest shall remain as debts due and owing in accordance with section 29-5(b) above.
- (h) The Village Manager or his designee is authorized and directed to certify upon request the amount of fees, late charges and interest accrued, which are due and owing to the Village for any Developed Property which is subject to payment of said fees, or the Village Manager may certify that no fees, late charges or accrued interest are due and owing.
- (i) Alternative collection method. Notwithstanding the foregoing, the Village, pursuant to Section 403.0893(3), Florida Statutes, may use the non-ad valorem levy, collection and enforcement method as provided for in Chapter 197, Florida Statutes for fees assessed pursuant to this Chapter.

Section 3. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

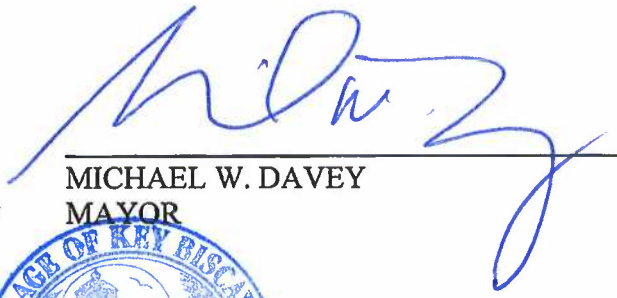
Section 4. Codification. That it is the intention of the Village Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Village's Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

Section 5. Conflicts. That all ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 6. Effective Date. That this Ordinance shall become effective immediately upon final adoption on second reading.

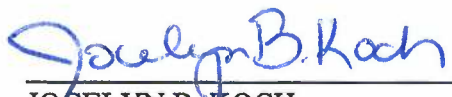
PASSED on first reading on the 17th day of November, 2020.

PASSED AND ADOPTED on second reading on the 8th day of December, 2020.



MICHAEL W. DAVEY
MAYOR

ATTEST:



JOCELYN B. KOCH
VILLAGE CLERK



APPROVED AS TO FORM AND LEGALITY:



WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY